

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #9	CCRB Case #: 201600489	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/19/2016 11:00 AM	Location of Incident: § 87(2)(b)	Precinct: 114	18 Mo. SOL 7/19/2017	EO SOL 7/19/2017	
Date/Time CV Reported Tue, 01/19/2016 8:26 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 01/19/2016 8:26 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Michael Perez	02470	930939	WARRSEC
2. DT3 Joseph Viggiano	06676	919824	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Joseph Viggiano	Abuse: Det. Joseph Viggiano entered § 87(2)(b) in Queens.	§ 87(2)(b)
B.DT3 Michael Perez	Abuse: Det. Michael Perez entered § 87(2)(b) in Queens.	§ 87(2)(b)

### Case Summary

On January 19, 2016, at approximately 11:00 a.m., Det. Joseph Viggiano and Det. Michael Perez of Brooklyn North Warrant Squad arrived at § 87(2)(b)'s address, located at § 87(2)(b), in Queens. Det. Viggiano and Det. Perez had been to this apartment at least two times in the past two months because they had an arrest warrant for § 87(2)(b), § 87(2)(b)'s former husband. § 87(2)(b) was not home when the detectives came to her apartment, but her § 87(2)(b)-old daughter, § 87(2)(b) and § 87(2)(b)-old son, § 87(2)(b) were home. § 87(2)(b) and § 87(2)(b) are on the lease of this apartment, along with § 87(2)(b). § 87(2)(b) alleged that Det. Viggiano and Det. Perez entered her apartment without consent (**Allegations A and B**). Det. Viggiano and Det. Perez asked § 87(2)(b) if he had seen § 87(2)(b) and § 87(2)(b) said he had not. Det. Viggiano and Det. Perez left the apartment. No one was arrested or issued a summons.

There is no video footage in this case.

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- On February 4, 2016, mediation was presented to § 87(2)(b) during her interview. She chose to pursue an investigation § 87(2)(b).
- On March 3, 2016, the New York City Comptroller's Office stated that no Notice of Claim had been filed in regard to this incident (Board Review 11).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) or § 87(2)(b) (Board Review 6).
- Det. Viggiano has been a member of service for 18 years. He has seven total cases with ten total allegations. In case number 200607892, it was alleged that Det. Viggiano entered the apartment without permission. The allegation was unsubstantiated. In case number 201112326, an entry was alleged, and it was substantiated. Det. Viggiano acknowledged entering an apartment with only an I-Card. The CCRB recommended that charges be brought against Det. Viggiano, while the NYPD recommended that he receive instructions. He ultimately received instructions. This is Det. Viggiano's only substantiated allegation. In case number 201204365, an entry was alleged, and it was closed as unsubstantiated. In case 201508621, an entry was alleged, and it was closed as exonerated (Board Reviews 8 and 16).
- Det. Perez has been a member of service for 13 years. He has eight total cases with 16 total allegations. In case number 200702612, a vehicle search was alleged, and it was substantiated. Charges were recommended by the CCRB, and the NYPD recommended that Det. Perez not be disciplined. This is his only substantiated allegation. In case number 201402123, two entry and search allegations were pleaded against him, and they were closed as exonerated (Board Review 7).

## Findings and Recommendations

**Allegation A –Abuse of Authority: Det. Joseph Viggiano entered § 87(2)(b) in Queens.**

**Allegation B –Abuse of Authority: Det. Michael Perez entered § 87(2)(b) in Queens.**

It is undisputed that since late November 2015, Det. Viggiano has been trying to locate and apprehend a male individual named § 87(2)(b) on gun-related charges. § 87(2)(b) and § 87(2)(b) were once married, but have been divorced for 22 years. It is undisputed that Det. Viggiano and Det. Perez had been to § 87(2)(b)'s apartment between two and four times prior to this incident on January 19, 2016. During these prior visits, § 87(2)(b) allowed the detectives to enter the apartment, to look around, and to ask her questions about § 87(2)(b). It is undisputed that in late December, § 87(2)(b) filed a harassment complaint against § 87(2)(b) with the 114<sup>th</sup> Precinct detective squad because § 87(2)(b) had been sending her threatening text messages, and she was afraid for her safety. It is undisputed that on January 19, 2016, Det. Viggiano called § 87(2)(b) and asked if she was home, and she told him that she was at a doctor's appointment. It is undisputed that after hanging up with § 87(2)(b) Det. Viggiano and Det. Perez entered the apartment and asked § 87(2)(b) about § 87(2)(b). Whether § 87(2)(b) consented to their entry is the only major fact in dispute.

§ 87(2)(b) stated that during her phone call with Det. Viggiano, he asked her if anyone was inside of her apartment. § 87(2)(b) said that her son and daughter were both home, but that they were both sleeping. Det. Viggiano asked if he could leave a card with them. § 87(2)(b) told Det. Viggiano that he could slide the card underneath the door, and Det. Viggiano replied that he would. Det. Viggiano then asked her if she had seen or spoken to § 87(2)(b). § 87(2)(b) said that she had not had any recent contact with § 87(2)(b). Det. Viggiano then said, "Maybe we'll just go to your home. I'm in your building." § 87(2)(b) reiterated that she was not home, and that they could schedule another time to talk. Det. Viggiano said, § 87(2)(b) are you sure you're not home?" § 87(2)(b) said that she would not lie to him. Det. Viggiano said that they would find another time to talk so that she could give him more information about § 87(2)(b). § 87(2)(b) told him she had given him all the information she had about § 87(2)(b). § 87(2)(b) also told Det. Viggiano that her neighbors were suspicious that she was speaking to the police. Det. Viggiano said that since she was afraid of § 87(2)(b) she should help the detectives find him and arrest him. § 87(2)(b) told Det. Viggiano to stop harassing her and to leave her alone. Det. Viggiano said, "Hopefully, you'll be in a better mood next time we talk." Det. Viggiano never told § 87(2)(b) that he was going to enter the apartment, and she never told him that he could enter or look around the apartment.

Shortly after § 87(2)(b) hung up her phone, it rang again. Her son, § 87(2)(b) was calling. § 87(2)(b) said that someone was knocking at the door. § 87(2)(b) thought it might have been the detectives, since they had just called her. § 87(2)(b) told § 87(2)(b) that he did not have to open the door, as Det. Viggiano said that he was going to slide his card underneath the door. § 87(2)(b) heard § 87(2)(b) say, "Can you hold on? I'm on the phone with my mom." § 87(2)(b) handed the phone to Det. Viggiano. § 87(2)(b) asked him why he was at her door, and why he was speaking to § 87(2)(b). § 87(2)(b) told Det. Viggiano to leave numerous times. Det. Viggiano said, "I just want to ask him a few questions." § 87(2)(b) heard § 87(2)(b) tell his sister, § 87(2)(b) that the detectives were there. § 87(2)(b) took the phone and told § 87(2)(b) that she was putting on clothes and would find out

what was happening. § 87(2)(b) then said that the detectives were inside of the apartment. § 87(2)(b) heard Det. Viggiano say, “Okay, § 87(2)(b) thanks for the information.” § 87(2)(b) then told her that the detectives had left (Board Review 1).

§ 87(2)(b) stated that he was on the phone with § 87(2)(b) when he heard a knock at the door. He looked through the peephole and asked who it was. Det. Viggiano and Det. Perez said that they were police officers. § 87(2)(b) opened the door approximately three inches. He told the detectives to hold on because he was on the phone with his mother. His intention was solely to speak to the officers. He did not intend to allow them inside of the apartment. The detectives said that they just wanted to come in and investigate the house. § 87(2)(b) told the officers to wait. He then shut the door so that it was “cracked” open. The door did not click shut. He walked into § 87(2)(b)’s room, which is at the end of a long hallway, and told her to wake up because the police were there. He could not see or hear the detectives from § 87(2)(b)’s bedroom. He intended to walk back to the door, and open the door slightly, as he had done before, and tell the detectives that his sister was coming to the door. As he was exiting § 87(2)(b)’s bedroom, he saw the detectives standing in the kitchen. He did not know how they entered the apartment. § 87(2)(b) never told them that they could come inside of the apartment, and he never motioned or gestured for them to enter. The detectives never asked to come inside of the apartment. The detectives asked him about § 87(2)(b) and then they left (Board Review 2).

§ 87(2)(b) stated that § 87(2)(b) entered her bedroom and told her that detectives were at the door. § 87(2)(b) did not get out of bed because she had been in a very deep sleep. Five or ten minutes later, § 87(2)(b) reentered her bedroom and told her that their mother was on the phone. § 87(2)(b) told § 87(2)(b) to go to the door and speak to the detectives. From her bedroom, § 87(2)(b) heard the detectives ask § 87(2)(b) “Do you know him? Has he been here?” She heard § 87(2)(b) whisper in response, but she could not hear what he said. § 87(2)(b) walked into the hallway and said, “What’s going on?” She saw Det. Viggiano inside of the apartment, and a shadow in the hallway indicated that at least one other detective was immediately outside of the apartment. Det. Viggiano said, “Okay, § 87(2)(b) you can lock the door now,” and then walked out of the apartment. She never saw Det. Perez inside of the apartment (Board Review 3).

Det. Viggiano stated that on January 15, 2016, he had received information from Det. Jose DeJesus, the detective from the 114<sup>th</sup> Precinct who was assigned to § 87(2)(b)’s harassment complaint against § 87(2)(b). Det. DeJesus had told Det. Viggiano that § 87(2)(b) had given him new information about § 87(2)(b) including a phone number and location where he might be living. Det. DeJesus provided Det. Viggiano with this new information, but Det. Viggiano wanted to hear it directly from § 87(2)(b). He explained that he wanted the information “unfiltered.” His intention in going to her apartment on January 19, 2016, was to conduct a follow-up interview of § 87(2)(b). Once the detectives entered § 87(2)(b)’s building, Det. Viggiano called her cell phone from the lobby. He called her because he wanted to see if she was home. She stated that she was at a doctor’s appointment. Det. Viggiano asked her if she had had any recent contact with § 87(2)(b). She said that she had not had any contact with § 87(2)(b) for several weeks. She denied knowledge of any new phone number for § 87(2)(b). § 87(2)(b) became irritated with the questions that Det. Viggiano was asking, and she asked Det. Viggiano why he was “harassing” her. Det. Viggiano explained that he was trying to help her, and that she was their link to § 87(2)(b).

Det. Viggiano stated during his CCRB interview that he was surprised § 87(2)(b) would accuse him of harassing her. Det. Viggiano also testified that in his experience, victims of domestic violence like § 87(2)(b) will initially cooperate with the police, and then will become defensive and uncooperative. Det. Viggiano explained that after his tense conversation with § 87(2)(b) he wanted to visit her apartment “for her own safety.” Det. Viggiano later clarified that he never had any specific reason to suspect that § 87(2)(b) might have been inside of § 87(2)(b)’s apartment on this date.

Det. Viggiano stated that he told § 87(2)(b) he was going to “stop by her apartment and leave his card.” He never told her that he would slide his card underneath the door. Det. Viggiano added that he never slides his card underneath doors. Det. Viggiano thought that § 87(2)(b) told him over the phone that § 87(2)(b) was home. He could not recall if she told him anything else, or if § 87(2)(b) was also home. After speaking with § 87(2)(b) for a couple of minutes, Det. Viggiano and Det. Perez went to her apartment. Det. Viggiano stated that his sole intention was to leave his card at the apartment. He knocked on the door for approximately fifteen seconds. A male individual, identified as § 87(2)(b) answered the door. Det. Viggiano stated he did not recall how far he opened the door. Det. Viggiano did not recognize § 87(2)(b) and he did not think he had met him before this occasion. Det. Viggiano introduced himself and said that he had come to leave a card for § 87(2)(b). § 87(2)(b) introduced himself and said that § 87(2)(b) was his mother. Det. Viggiano then said, “Can I come in?” or something similar. § 87(2)(b) allowed Det. Viggiano and Det. Perez inside of the apartment. When asked how he allowed them to enter, Det. Viggiano said, “He responded by letting us come in.” Upon further questioning, Det. Viggiano stated that he did not recall how § 87(2)(b) told him that he could enter. He did not recall if § 87(2)(b) said anything to indicate his verbal consent. Det. Viggiano testified that “It is common for people to gesture or make a motion to enter,” but he did not recall if § 87(2)(b) made any gestures that indicated the detectives could enter. When asked how the door was opened wide enough for them to enter, Det. Viggiano said, “With § 87(2)(b)’s arm.” Det. Viggiano clarified that § 87(2)(b) opened the door with his arm so that the officers could enter.

Det. Viggiano stated that § 87(2)(b) never closed the door and said, “Hold on, I need to get my sister,” or anything similar. He never said, “I’ll be right back,” or anything similar. Det. Viggiano stated that he spoke with § 87(2)(b) for less than one minute before entering the apartment. Det. Viggiano reiterated that he wanted to enter the apartment so that he could leave his card. He then stated that he wanted to ask § 87(2)(b) “a couple of questions in regard to the perpetrator,” and he did not want to have this conversation while he and Det. Perez were still in the hallway, as “this was privileged information.” There was no other reason why Det. Viggiano entered the apartment.

At some point during the five minutes that Det. Viggiano estimated that he and Det. Perez were inside of the apartment, § 87(2)(b) called § 87(2)(b). § 87(2)(b) spoke to his mother, and then handed Det. Viggiano the phone. § 87(2)(b) asked Det. Viggiano why he was inside of her apartment. Det. Viggiano replied that he had told her that he was coming to her apartment to leave a card. § 87(2)(b) said, “Okay.” She never told him to leave the apartment. Det. Viggiano stated that she still seemed agitated during this second phone conversation, which lasted approximately thirty seconds (Board Review 4).

Det. Perez corroborated that they went to the apartment to speak to § 87(2)(b) with the hope that she would give them the same information she gave the detective from the 114<sup>th</sup> Precinct. Det. Perez stated that when Det. Viggiano called § 87(2)(b) on this date, she stated

that her daughter was home. She did not say that her son was also home. Det. Viggiano explained that he was going to knock on the door and leave a card at the apartment. § 87(2)(b) said that this was fine. Det. Viggiano never told her that he would slide a card underneath her door. Det. Perez stated that warrant squad detectives never slide their cards underneath doors. Det. Perez could not hear what § 87(2)(b) was saying to Det. Viggiano, so he did not know if she ever told him not to come to her apartment. Det. Viggiano never told Det. Perez that § 87(2)(b) told him not to go to her apartment, or not to question her children. Det. Viggiano spoke to § 87(2)(b) for approximately two minutes. During the call, Det. Viggiano told her that she should not be “giving him a hard time” because they were trying to arrest § 87(2)(b) which would help her. On this date, Det. Perez had no specific reason to suspect that § 87(2)(b) was inside of § 87(2)(b)s apartment.

Det. Perez and Det. Viggiano went and knocked on the door of the apartment. After a few seconds, § 87(2)(b) came to the door. He appeared to be § 87(2)(b) or § 87(2)(b) years old and seemed mentally competent. Det. Viggiano introduced himself and asked § 87(2)(b) if he could come in and speak to him. They intended to question him. § 87(2)(b) responded, “Sure, no problem,” or something similar. He opened the door and stepped away from the door, allowing them to enter. At no point did he say, “Hold on, I need to get my sister,” or anything similar. He never attempted to close the door, or closed the door, even slightly. At no point did he object to the detectives entering the apartment. A few seconds after the detectives entered the apartment, § 87(2)(b) walked away from the kitchen and picked up the phone. He was speaking to § 87(2)(b). He told her that the detectives were inside of the apartment. Det. Viggiano said that he would speak to § 87(2)(b) and § 87(2)(b) handed him the phone. Det. Viggiano said to her, “I told you that I was going to leave a card at your apartment.” To Det. Perez, it sounded like § 87(2)(b) was not cooperating with Det. Viggiano. Det. Perez never heard § 87(2)(b) tell Det. Viggiano to leave the apartment, and Det. Viggiano never told Det. Perez that she had told him to leave. § 87(2)(b) was walking around the apartment, and was never questioned. She never told the detectives to leave the apartment. Det. Viggiano handed § 87(2)(b) his card, and the detectives left. Det. Perez estimated that they were inside of the apartment for five minutes (Board Review 5).

The police have the burden of establishing the existence, and the voluntariness, of consent Florida v. Bostick 501 U.S. 429, 438 (1991); People v. Keesler, 842 N.Y.S.2d 166 (2007) (Board Reviews 12 and 13). In addition, the background of the consenter, including age, is a factor to consider when determining the existence and voluntariness of the consent People v. Gonzalez 39 N.Y. 2d 127 (1976) (Board Review 15). Officers may enter an apartment when they have obtained voluntary consent from an individual who possesses the requisite degree of authority and control over the premises People v. Watson 101 A.D. 3d 913, 955 N.Y.S. 2d 411, N.Y. Slip Op. 08562 (Board Review 14). An individual who is a minor can provide valid consent to enter an apartment if the state can show 1) the minor shares the home with a nonconsenting parent who is not present at the time that the officers are requesting consent, 2) the officer believes that the minor and the parent has authority to allow the officers into the home, and 3) by clear and convincing evidence that the minor’s consent was freely and voluntarily given under the totality of the circumstances Saavedra v. State (1993, Fla) 622 So 2d 952, 18 FLW S 317, cert den (US) 127 L Ed 2d 93 (Board Review 17).

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

[REDACTED]

It is undisputed that § 87(2)(b) became angry with Det. Viggiano during their phone call, and even accused him of harassing her. § 87(2)(g)

[REDACTED]

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Squad: 9

Investigator: \_\_\_\_\_

Signature	Print	Date
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Squad Leader: \_\_\_\_\_

Title/Signature	Print	Date
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Reviewer: \_\_\_\_\_

Title/Signature	Print	Date
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